IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 31 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

RAYMON GLUES & CHEMICALS

Appearance:

1. INCOME TAX REFERENCE No. 31 of 1993
MR KM PARIKH for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 16/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax, Baroda.

"Whether the Appellate Tribunal is right in law and on facts in holding that deduction u/s 80HHC(1)(b) is available at 5% on the increase in the turnover of two items separately though there is a decline in overall export turnover during the present assessment year as compared to the immediately preceding year?"

2. The assessment year is 1983-84 and the relevant accounting period is year ended on 31st March 1983. The assessee, a partnership firm claimed deduction under Section 80HHC of the Act at 1% of the export turnover of Rs.1,83,50,024=00. The additional deduction under the said provision at 5% of export turnover was claimed in light of the increase in turnover of garments and ossein goods. The assessing officer was of the view that though the export turnover had increased in relation to aforementioned commodities over the export turnover of the preceding previous year, as there was decline in the third commodity of export as compared to the export for the immediately previous year, the assessee was not entitled to deduction at the rate of 5%. In other words, according to the assessing officer, the total export turnover of the year under consideration was lower than the total export turnover for all the three items taken together in the immediately preceding previous year and hence, the additional deduction at the rate of 5% was not available to the assessee.

3. The assessee carried the matter in appeal before C.I.T. (Appeals), who, for the reasons stated in the order of 19th September 1988, allowed the appeal on this ground and held that the assessee was entitled to deduction under Section 80HHC(1)(b) of the Act. The Tribunal has, extensively re-produced reasoning adopted by C.I.T. (Appeals) and confirmed the appellate order vide order dated 20th March 1992.

4. Mr.K.M.Parikh, the learned standing counsel appearing for the applicant revenue has been heard. Though served, there is no appearance on behalf of the respondent assessee.

5. According to the learned counsel for the revenue, both C.I.T. (Appeals) and the Tribunal have failed to take into consideration the object with which Section 80HHC of the Act has been introduced i.e. to boost exports and earn higher foreign exchange for the country. That, in the circumstances, if and only if, the total export turnover exceeds the total export turnover of the immediately preceding previous year, would an assessee be entitled to additional deduction at the rate of 5% under Clause (b) of sub-section (1) of Section 80HHC of the Act. Elaborating on the contention, it was submitted that, under Clause (a) of sub-section (1) of Section 80HHC of the Act, an assessee was entitled to deduction at the rate of 1% of the total export turnover regardless of the fact that such total export turnover may or may not exceed the total export turnover of the immediately preceding previous year; but, when the assessee sought additional deduction under Section 80HHC(1)(b) of the Act, the assessee was required to show that its total export turnover had increased when compared to the total export turnover of the immediately preceding previous year. That the contention raised on behalf of the assessee, and accepted by the Tribunal, to the effect that Clause (b) of sub-section (1) of Section 80HHC of the Act had to be applied item-wise or commodity-wise, was an incorrect reading of the provision. That, as in the present case, if such an interpretation is adopted, despite the fact that the total export turnover had gone down in the year under consideration, when compared with total export turnover of the immediately preceding previous year, it would be doing violence to the provision and the object for which the provision was enacted. In support of his submissions, Mr.Parikh has placed reliance on decision of Calcutta High Court in case of Commissioner of Income-Tax v. Indian Products Ltd., (1994) 207 ITR 647.

6. Section 80HHC of the Act, as applicable to the assessment year under consideration, was introduced with effect from 1st April 1983 by the Finance Act, 1983, and reads as under :

"Deduction in respect of export turnover :

80HHC. (1) Where the assessee, being an Indian company or a person (other than a Company) who is resident in India, exports out of India during the previous year relevant to an assessment year any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this

section, be allowed, in computing the total income of the assessee, the following deductions, namely :-

(a) a deduction of an amount equal to one per cent of the export turnover of such goods or merchandise during the previous year; and

(b) a deduction of an amount equal to five per cent of the amount by which the export turnover of such goods or merchandise during the previous year exceeds the export turnover of such goods or merchandise during the immediately preceding year.

(2)(a) This section applies to all goods or merchandise [other than those specified in clause (b)] if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange.

(b) The goods or merchandise referred to in clause (a) are the following, namely :-

(i) agricultural primary commodities, not being produce of plantations;

(ii) mineral oil;

(iii) minerals and ores; and

(iv) such other goods or merchandise as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) No deduction under clause (b) of sub-section (1) shall be allowed unless the assessee had, during the immediately preceding previous year, exported out of India goods or merchandise to which this section applies.

Explanation : For the purposes of this section, -

(a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of

the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(b) "export turnover" means the sale proceeds of any goods or merchandise exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962)"

7. On a plain reading of the aforesaid provision, legislative intent which is discernible is that an assessee who exports out of India during the relevant previous year any goods or merchandise, as qualified under sub-section (2), would be entitled to deductions in accordance with Clause (a) and Clause (b) of sub-section (1). In so far as deduction under Clause (a) of sub-section (1) is concerned, there is no dispute and the provision does not present any difficulty: it is provided that a deduction equal to 1% of the export turnover of the qualifying goods during the previous year is available to an assessee. However, when one comes to Clause (b) of sub-section (1), the difficulty arises. The revenue wants the Court to read the term "total" as preceding the phrase "export turnover" in the entire section and more particularly in Clause (b). According to the revenue, Clause (b) of sub-section (1) can apply only in a situation where, despite the fact that export turnover of certain commodities exceeds the export turnover of the immediately preceding previous year, regardless of the fact that the commodities may not be the same in the two years under comparison, the only requirement being that the total export turnover, on comparison, between the year under consideration and the immediately preceding previous year should increase.

8. The said interpretation does not flow from a plain reading of the said clause. Firstly, the requirement of total export turnover does not appear from the provision and it is well settled that a Court is not empowered to import anything in the statute, unless and until without doing so the provision does not make sense. In the present case, that is not the situation. Without adding the term "total" before the phrase "export turnover", it is possible to make out the legislative intent. The underlying idea behind Clause (b) of sub-section (1) of Section 80HHC of the Act is to reward an exporter by way of additional deduction at the rate of 5% of the export turnover in cases where such export turnover exceeds export turnover of the same items or commodities which were exported during the immediately

preceding previous year. In other words, for becoming entitled to additional deduction, an assessee has to establish that, (a) the assessee had exported the same items or commodities in the year under consideration and in the immediately preceding previous year; (b) the export turnover of such items, identifying commodity-wise, exceeds the export turnover of the same item / commodity in the immediately preceding year. It is not sufficient if the total export turnover has gone up when compared to the immediately preceding previous year, if an assessee fails to show that the excess is not relatable to goods which were exported in the immediately preceding previous year. This becomes apparent when one reads sub-section (3) of Section 80HHC of the Act. It specifically prohibits deduction under Section 80HHC(1)(b) of the Act unless the assessee had, during the immediately preceding previous year, exported out of India goods or merchandise to which section applies. Thus, on a conjoint reading of Section 80HHC(1)(b) and Section 80HHC(3), it is clear that the use of the phrase "such goods or merchandise" in Clause (b) relates to the identification of the goods which were exported during the immediately preceding previous year.

9. No other view is possible. If the interpretation sought to be placed on the provision by the revenue is accepted, sub-section (3) becomes otiose and it is well established canon of interpretation that, while interpreting a provision, every part of that provision should be assigned some meaning and the interpretation which makes a part of the provision redundant or otiose should be avoided. The contention that the phrase "such goods or merchandise" used in Clause (b) and Clause (a) of sub-section (1) of Section 80HHC of the Act, have one and the same meaning, that is to say, the qualifying goods only, is to over simplify the proposition. In Clause (a) of sub-section (1), the phrase "such goods or merchandise" is used to denote "any goods or merchandise to which this section applies", used in the opening portion of sub-section (1), that is to say, the export turnover of the goods described as qualified goods in sub-section (2) of Section 80HHC of the Act. However, when one comes to Clause (b) of sub-section (1), the phrase "such goods or merchandise" not only relates to qualifying goods, but also identifies the goods which were exported in the immediately preceding previous year. To put it differently, the goods have to be not only qualifying goods (that being the first pre-requisite), but the goods have also to be the same goods which were forming part of the export turnover of the immediately preceding previous year. Therefore, when the same phrase

is used at two places in Clause (b), it denotes the goods which are qualifying goods and which formed part of the export turnover in the immediately preceding previous year. This interpretation flows on a plain reading of the provisions and gets support when sub-section (3) of Section 80HHC of the Act is read in the overall scheme of the provision.

10. The interpretation as placed hereinbefore is in consonance with circular No.372 dated 8th December 1983 which gives the Explanatory notes on the provision relating to direct taxing as incorporated in the Finance Act, 1983. In paragraph No.42.2(iii), this is what is stated :

"42.2 (iii) The tax concession at (b) above will be available only if the assessee has exported out of India any qualifying goods or merchandise during the previous year immediately preceding the relevant previous year for which the deduction is claimed. In other words, if an assessee newly enters the export trade during a particular year, he will be entitled for that year only to the concession contained at (a) and not the concession at (b) above."

[(1984) 146 ITR St.9-41]

11. The decision of High Court of Calcutta, on which the learned counsel for the revenue has placed reliance, was dealing with converse situation. In the case before the Calcutta High Court, the assessee had exported jute, tea and coffee during the year under consideration, but in the immediately preceding previous year, only jute and tea had been exported. The stand of the revenue was that, while working out deduction under Section 80 HHC(1)(b) of the Act, the turnover of coffee had to be kept out of the zone of consideration and the assessee was contending that the total turnover of all the three items had to be taken into consideration for the purposes of comparing with the export turnover of the immediately preceding previous year. The Calcutta High Court has negatived the contentions raised by the revenue and accepted the submissions made on behalf of the assessee by holding that, for the purposes of Clause (b) of sub-section (1) of Section 80HHC of the Act, one has to compare the aggregate export turnover of all qualifying goods during the relevant previous year with the aggregate export turnover of all qualifying goods during the immediately preceding previous year. With due

respect to the Hon'ble Calcutta High Court, the view adopted in the said case does not flow from the provisions and it requires to be noted that provisions of sub-section (3) of Section 80HHC of the Act were not brought to the notice of the Hon'ble Calcutta High Court. In the circumstances, this Court begs to differ from the view expressed by the Hon'ble Calcutta High Court for the reasons stated hereinbefore.

12. In the result, there is no infirmity in the impugned order of the Tribunal which would require this Court to interfere. The Tribunal was right in law in holding that deduction under Section 80HHC(1)(b) of the Act was available at the rate of 5% on the increase in the turnover of two items separately, though there was a decline in overall export turnover during the relevant year as compared to immediately preceding previous year. The question referred to the Court is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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